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Supreme Court of the United States

OCTOBER TERM, 1965

No. 542

BENJAMIN PISANO,

Petitioner,

—against—

S.S. BENNY SKOU, her engines, boiler, tackle, etc., *in rem,* and OVE SKOU, D/S OVE SKOU, A/S and D/S af 1937 A/S,

Respondent,

—against—

JOHN T. CLARK & SON,

Respondent-Impleaded.

BRIEF OF RESPONDENT-IMPLEADED, JOHN T. CLARK & SON, IN OPPOSITION TO PETITION FOR CERTIORARI

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Opinions of the Courts Below

The opinion of the United States District Court for the Southern District of New York is reported at 220 F. Supp. 901; and its affirmance by the United States Court of Appeals for the Second Circuit is reported at 346 F. 2d 993.

Statement

The apocryphal lawyer's tale of pounding the table and shouting about the law when the facts are against you, and vice versa, has been followed by petitioner herein. Having failed to satisfy both the District Court and the Circuit Court that he had adduced sufficient proof to support his claim, petitioner now seeks to obtain a new trial by masking such failure of proof with a question begging and unrelated legal issue.

Thus, the opinion of the Hon. Irving Ben Cooper, who tried the matter as an Admiralty cause, states (as reprinted at page 13 of the petition):

> "The various theories advanced by libelant as to the causes of the accident are not sustained by the facts. The evidence to support them falls far short of sustaining the libelant's burden of proof, both quantitatively and qualitatively."

Further commenting upon libellant's contention as to the cause of the accident, the Trial Judge added (as reprinted at page 14 of the petition):

> "The proof does not support this theory. Inference piled upon inference can not substitute for tangible evidence."

Indeed, the Trial Judge rejected as unproven petitioner's contention that the accident was caused by a defective condition in a guy line, and found rather that it was brought about solely by petitioner's failure to place the required half-hitch in the preventer wire rigged by him.

In affirming the dismissal of the libel herein, the Court of Appeals for the Second Circuit states (as reprinted at page 20 of the petition):

> "The record reveals that Pisano presented no concrete proof of the cause of the accident."

The Questions Presented

The real questions presented herein are (1) did petitioner adduce sufficient proof in support of his claim, and (2) whether a longshoreman injured solely by his own fault, and who has already received the benefits of the *Longshoremen's and Harbor Workers' Compensation Act,* is entitled to recover further damages for such injury from the innocent owner of the ship on which the accident occurred.

Significantly, petitioner does not challenge the findings regarding his failure of proof and, therefore, tacitly concedes the first issue and most probably renders everything else academic.

Reasons for Denying the Writ

1. *The issue is not of sufficient importance to warrant the attention of this Court.*

The failure of this petitioner during the course of a seven-day trial to prove his contention that on the 22nd day of July 1960 a guy line of the S.S. BENNY SKOU was defective and caused his injury, which failure of proof was affirmed by the Circuit Court, does not contain any issue of widespread importance or application. This petitioner's failure of proof, like any party's failure of proof, is a limited, local and provincial issue of importance solely to

that party. It is neither of nationwide nor industrywide interest. It has no far reaching significance. It does not warrant this Court's limited time and attention in view of the many questions of vast import to society clamoring for that same time and attention.

2. *There is no conflict between the circuits.*

Not a single one of the cases cited by petitioner as evidence of a decisional conflict involves the situation of a maritime worker being found to have been *solely* at fault for his own injuries. Petitioner's authorities are, therefore, completely inapposite.

When we examine the authorities involving accidents caused *solely* by some negligent act of the injured man, we find that there is unanimity in denying recovery. Thus, in *Donovan* v. *Esso Shipping Co.*, 259 F. 2d 65 (3 Cir. 1958), the plaintiff was injured by a falling boom which fell only because the plaintiff had mistakenly loosened the topping lift cable, and plaintiff was denied a recovery. Similarly, in *Williams* v. *S.S. Richard de Larringa,* 287 F. 2d 732 (4 Cir. 1961), a plaintiff-longshoreman was denied a recovery for injuries caused solely by his application of undue force to a wheel used to raise the hatch. And, in *Holmes* v. *Mississippi Shipping Company,* 301 F. 2d 474 (5 Cir. 1962), a schizoid seaman was held not entitled to recover damages for self-inflicted personal injuries resulting from his own schizophrenia.

3. *The opinion of the Court of Appeals is not contrary to any decision of this Court.*

The refusal of the Court of Appeals to give a longshoreman, injured *solely* by his own fault, and who has already recovered the benefits of the *Longshoremen's and*

Harbor Workers' Compensation Act, a damage award against an innocent shipowner is completely in accord with the holding of this Court that a shipowner is not obligated to furnish an accident-free ship, *Mitchell* v. *Trawler Racer, Inc.,* 362 U. S. 539. As the progeny of *Mitchell* indicate, a shipowner is not legally liable for the mere fact of a shipboard accident, *Blier* v. *U. S. Lines Co.,* 286 F. 2d 920 (2 Cir. 1961).

To give this plaintiff a recovery under the circumstances involved in this case would, on the other hand, be completely contrary to the holding of this Court in *West* v. *United States,* 361 U. S. 118, that a shipowner is not responsible to the employee of a shoreside contractor injured solely by the details and method of the work.

CONCLUSION

The so-called "Question Presented" in the petition is purely a creation of the Petitioner and does not really touch upon the issue involved in this case. The real issue in controversy herein was plaintiff's failure to prove that the accident was caused by a defective guy rope as alleged, and the well supported and documented findings of fact that the accident was caused solely by plaintiff's own negligence.

These factual findings, which petitioner does not here challenge, resulted in a dismissal of his action and such dismissal is completely in accord with the results reached in other Circuits in cases involving injury caused *solely* by a negligent act of the injured man himself. The end result is also in accordance with the decisions of this Court and the principles of law emanating therefrom.

Petitioner's failure of proof is not of sufficient importance to warrant the time and attention of this Honorable Court, and there appears to be no reason whatsoever why this case should be reviewed by this Court.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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